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Supreme Court of the United States

OCTOBER TERM, 1953

No. 63

THE GIDEONS INTERNATIONAL,
a Corporation of Illinois, and
BOARD OF EDUCATION OF THE BOROUGH
OF RUTHERFORD (NEW JERSEY),

Petitioners,

v.

BERNARD TUDOR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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From The Bible—The Word of God:

"And these words, which I command thee this day, shall be in thine heart: and thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up."—Deuteronomy 6:6-7.

"Suffer the little children to come unto me, and forbid them not: for of such is the kingdom of God."—Mark 10:14.

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Petitioners,

v.

BERNARD TUDOR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

TO THE SUPREME COURT OF THE UNITED STATES:

The Gideons International, a corporation of Illinois (hereinafter called The Gideons), and the Board of Education of the Borough of Rutherford, New Jersey (hereinafter called The Board), pray that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey, reversing the judgment of the Superior Court of New Jersey, Law Division for Bergen County, with directions to issue an injunction restraining the distribution of a volume containing certain printed portions of the King James Version of the Bible by petitioner, The Gideons, in accordance with a regulation of the petitioner, The Board, on the ground that the separation clause in the First Amendment to the United States Constitution, made applicable by the Fourteenth Amendment, and Article I, paragraph 4 of the New Jersey Constitution prohibited such distribution.

Opinions Below

The Superior Court judge did not file an opinion. The oral statement of facts and the conclusions reached by him are included in the Transcript of Record [92-98][1] but are not reported. The opinion of the Supreme Court of the State of New Jersey [106-127] is reported in 14 N. J. 31-52.

Jurisdiction

(1) The final judgment of the Supreme Court of New Jersey (its highest Court) was filed December 7, 1953. [127]

(2) No petition for rehearing was filed in the Supreme Court of New Jersey.

(3) On February 24, 1954, Mr. Justice BURTON granted an order that time for filing petition for writ of certiorari be extended to and including May 6, 1954. [128]

(4) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. § 1257 (3).

Questions Presented for Review

Compulsory daily Bible reading for students in New Jersey public schools is fixed by law. 18 N. J. R. S. 14-78 (1937), L. 1903 (2d Sp. Sess. c. 1, Sec. 114, p. 45); *Doremus* v. *Hawthorne*, 5 N. J. 435 (1950), appeal dismissed 342 U. S. 429. Petitioner, The Gideons, offered as a free gift a printed volume containing all of the New Testament and parts of the old Testament (all of Psalms and Proverbs) taken from the King James Version of the Bible to children in the Rutherford schools subject to approval of The Board, petitioner herein, for free distribution to the chil-

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1 Figures appearing herein within brackets refer to pages of the printed Transcript of Record filed herein.

dren. By resolution The Board authorized the proposal made by The Gideons for delivery of the volume to children whose parents signed a written request for it. This distribution has been ordered enjoined by the highest court of New Jersey on the ground that the volume is a sectarian book, the distribution of which is prohibited by the doctrine of separation of church and state in the state and federal constitutions.

I.

The question presented here, therefore, is whether the right of The Gideons to distribute the volume under its freedom of the press guaranteed by the First and Fourteenth Amendments to the Constitution has been denied by the construction placed by the Supreme Court of New Jersey upon the state constitution Article I, paragraphs 3 and 4. Does the Constitution of New Jersey, consequently, as construed and applied, conflict with the First and Fourteenth Amendments to the United States Constitution?

II.

Incidental to this main question, and also involved, is whether the separation clause of the First Amendment to the United States Constitution, through the force of the Fourteenth Amendment, forbids the distribution of the nonsectarian volume to children by petitioner, The Gideons, under the arrangements made with petitioner, The Board. The rights of both petitioners and the parents and children, represented by The Board, are concerned with this question. In other words, is the separation clause of the First Amendment to be construed so as to prevent parents and children in the schools desiring it from having distributed to them the nonsectarian volume of Scriptures and produce an inconsistency on the face of the First Amendment or unreasonably result in irreconcilable ambiguities?

III

In event this Court holds that the right to distribute the volume is guaranteed by freedom of the press provisions, and not prohibited by the separation clause of the First Amendment, then another question is presented. Has the Supreme Court of New Jersey construed and enforced the statutes and the constitution of that state in such a way as to discriminate against petitioner, The Gideons, and deprive petitioner of freedom of the press, contrary to the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution?

Statutory and Constitutional Provisions Involved

I.

RESOLUTION

Resolution of Board of Education of the Borough of Rutherford passed November 5, 1951:

"Mrs. Kohler, seconded by Mr. Burnham, moved that the Gideon Bible Society be allowed to furnish copies of the New Testament, Psalms and Proverbs to those pupils who request them. On Roll Call all present voted 'Aye' with the exception of Mr. Drucker, who voted 'No'. The Chair declared the motion carried."—Exhibit P-2 [100].

See also Exhibit P-3 [11], notice to all parents and request form, and Exhibit P-4 [101], letter from supervising principal to principals, which implement the above resolution and which for brevity's sake are not recopied here.

II.

STATUTE

"No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys ap-

propriated for the support of public schools."—N. J. R. S. (1937) 18:14-78, L. 1903 (2d Sp. Sess.), c. 1, Sec. 114, p. 45.

Note: The compulsory Bible reading statute in R. S. 18:14-77 is printed in the statutes before the permissive statute in 14-78 above noted, but actually 14-78 was enacted years before 14-77.)

III.

New Jersey Constitution

"No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

"There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust."—Constitution of the State of New Jersey (1947), Article I, paragraphs 3 and 4.

IV.

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."—Constitution of the United States, First Amendment (submitted 1789, in force December 15, 1791).

V.

Fourteenth Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."—Constitution of the United States, Fourteenth Amendment (submitted, 1866, ratified July 28, 1868).

Statement of the Case

The petitioner, The Board, operates tax-supported free public schools. As in other schools, it must provide free textbooks. It enjoys home rule in the selection of them with one exception, namely: the Holy Bible. The Board must provide the Bible because it is bound by R. S. 18:14-77. This statute causes to be read upon every school day five verses from that portion of the Holy Bible known as the Old Testament. This is without comment in each public school classroom or in a general assembly. It may exercise its discretion in the permissive reading of the Bible and the recitation of the Lord's Prayer under the statute, 14-78. The law of compulsory Bible reading was upheld in *Doremus* v. *Hawthorne*, 5 N. J. 435 (1950). That decision was reaffirmed in this case. [122]

The petitioner, The Gideons, is an association of businessmen. [105] The Gideons of Passaic and Bergen Counties consist of local businessmen. [15] The Gideons gave Bibles for use in the public schools of both those counties. [77, line 26, to 78, line 34] This saves The Board, and the taxpayers in those counties, the expense of buying Bibles for its compulsory Bible reading program and for general library and classroom use.

These placements by petitioner, The Gideons, in Rutherford, were part of the 3,790,198 Bibles placed by it in hotels, hospitals, schools and institutions. [105, 14, lines 1 and 2, 15][2] Of these whole Bibles 136,009 have been placed by The Gideons in the hotels and schools of the State of New Jersey up to October 31, 1953.[3] It is estimated that thousands of these were gifts to the public schools of New Jersey, including gifts of Bibles to Hawthorne as well as to Rutherford.

As part of its national campaign to furnish the Word of God free to the young people of our country, The Gideons of Passaic and Bergen Counties offered volumes (Exhibit P-6) to The Board. [99] This offer was accepted, resulting in the resolution under attack, Exhibit P-2. [100] The resolution was implemented by letters to parents and requests (Exhibit P-3) and instructions to principals (Exhibit P-4). These steps were taken in order to insure that the distribution was entirely voluntary. It was to safeguard against any coercion or embarrassment of minorities. [72]

Objection was made by a Jewish rabbi and a Roman Catholic priest. [69] The Board then obtained the opinion of its counsel as to the legality of the proposed distribution of Bibles. It was advised by its counsel that the proposed distribution was, in the opinion of counsel, legal. [9] The Board by its president stated to those who opposed the distribution that it would be glad to entertain requests to distribute other Bibles. [82]

Parents of 615 children out of approximately 2200 school children in 1952 [77, 102] requested a copy of the volume of selected Scriptures (Exhibit P-6).

Respondent, Bernard Tudor, a Rutherford resident and taxpayer, was the parent of a child attending a public school in Rutherford. [17] He instituted this suit and at

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2 See also "The Gideon—A Christian Businessmen's Magazine," April, 1954, pages 50 and 51.

3 "The Gideon", January 1954, page 47.

first secured a restraint against the distribution. Ralph Lecoque, originally a co-plaintiff with Tudor, was an adherent of the Roman Catholic faith. After the commencement of the action he transferred his child from a public school to a Roman Catholic parochial school. [17, 110] The issue then became moot as to him. Since his abandonment of the action, neither the Roman Catholic Church officially nor any adherent thereof unofficially has had any part in prosecuting this action.

The State of New Jersey was originally named as a defendant but the action as to it has been dismissed. [13] The Gideons, petitioner, came in as an intervener at the request of The Board and with the consent of the respondent. [12]

The respondent crammed the record full of opinion evidence by theologians and educators against petitioners. It was to the effect that the King James Version was offensive to some religions represented by the students in the school. They also testified that the King James Version Bible when distributed by The Gideons was a sectarian book. [26-68) The Supreme Court of New Jersey based its entire conclusion that the Bible used by petitioners in this case was sectarian upon this testimony. [120-121, 122, 124, 126] The petitioners were "expertized" by the New Jersey Supreme Court right out from under the protection of the Federal Constitution.[4]

Rabbi Prinz testified [28]: "We accept Jesus of Nazareth as one of the figures of Jewish history, a Jew, born a Jew, died as a Jew, but we do not accept Jesus of Nazareth as the Christ."

Each of the three rabbis stated as a conclusion that the "Gideon Bible" (Exhibit P-6) is a sectarian book without defining "sectarian" and without any evidence to prove that conclusion.

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4 It will be shown hereinafter that expert opinion cannot be used to nullify the mandate of the Constitution and that findings of the state courts on sectarianism in an effort to bury the federal questions and prevent their resurrection by this Court are not binding on the Court. See infra, pp. 18-21.

The educators testified generally about "Jewish children * * * who by any kind of contact with the New Testament are thrown into a state of guilt" [42], "create a subtle pressure on the child" and "he will be something of an outcast and a pariah if he does not go along with the procedure," [43] but they did not prove coercion or pressure on those who did request the Bible or any possibility of ill effect in Rutherford.

The court below says: "The charge here is sectarianism" [122] and "the Gideon Bible is a sectarian book" but it does not define "sect", "sectarian" or "sectarianism" nor are these defined or proved by the respondent. [118]

Notwithstanding the voluminous and swelling opinion of his experts what respondent omitted to prove is of more significance than what he did prove! Consider now what he did not show.

(1) There is no evidence in the record of any coercion by agents of either of the petitioners in the operation of the distribution.

(2) There is no proof in the record that The Gideons is a "sect" or a "religious sect" or that it is guilty of sectarianism.

(3) There is no proof that The Gideons are the authors, translators or revisers of the text of the Holy Bible, although the volume (Exhibit P-6) is characterized as a "Gideon Bible."

How Federal Questions Raised

The federal questions sought to be reviewed were raised as follows:

In the complaint in lieu of prerogative writ, paragraphs 7 and 8, respondent Bernard Tudor charged that "said dis-

tribution of Gideon Bibles would impair his religious liberty in contravention of the Constitutions of the United States and of the State of New Jersey." [3]

In paragraph 8 of the complaint [3] respondent charged that "said practice of distributing within the public schools portions of the King James Version of the New Testament in cooperation with the Gideon Society would be contrary to the Constitutions of the United States of America, specifically Amendment I and Amendment XIV, in that it would constitute sectarian education; provide services in aid of one or more religions and in preference of one or more religions over others; and in that public funds and taxes would be expended and public instrumentalities and facilities would be used to support sectarian religious activities and institutions and for the purpose of teaching and practicing sectarian religion, contrary to the Constitution and laws of the United States of America and the Constitution of the State of New Jersey."—See also the prayer for relief. [4]

In the prayer, section b [4], the respondent prayed "That this court determine the validity, legality and constitutionality of the aforesaid practice; that it determine and declare by its judgment that said practice is invalid, illegal, unconstitutional and contrary to the laws and the Constitution of the United States of America."

The Board by its answer denied the allegations of paragraph 8 of the complaint [8] and by its second defense [10] alleged that "The proposed distribution is not a violation of the Constitutions of the United States or of the State of New Jersey."

The intervener's answer took the same position taken by The Board and denied the allegations of paragraphs 7 and 8 of the complaint. [14] In paragraph 4 it specifically alleged that the distribution did not violate the Federal Constitution. The Gideons thus brought into issue the federal constitutional question. [14]

Federal Questions Considered and Ruled on by Courts Below

In the temporary restraining order the trial court found that a serious question was raised by the lawsuit as to whether the distribution of the volume was protected or prohibited by the First and Fourteenth Amendments to the United States Constitution. [5]

By pretrial order, entered in the Superior Court it was set forth:

"3. The plaintiff Tudor as an adherent of the Jewish religion will contend that the proposed distribution of the New Testament will impair his religious liberty, in contravention of the Constitution of the United States and the State of New Jersey, and is contrary to the 1st and 14th amendments of the Constitution of the United States, and to the Constitution of New Jersey; and is also in violation of Revised Statutes 18:5-22 and 18:14-78.

"4. The defendants will contend that the distribution of this New Testament is legal and constitutional." [17]

The Superior Court judge held at the trial:

"I am unable to find from either the proof or the pleadings or the pretrial order where this proposed procedure by the Board of Education would violate any provision of the United States Constitution or the Constitution of the State of New Jersey, and particularly Amendments 1 and 14 of the Federal, and Article 1, Paragraph 4 of the State Constitution in 1947." [96]

In the Supreme Court of the State of New Jersey the federal as well as the state constitutional questions were raised and decided. The Supreme Court of the State of New Jersey held that the resolution of the defendant petitioner, The Board, violated the mandate of the First Amendment as incorporated into the Fourteenth Amendment, and the requirements of Article I, paragraph 4, of the New Jersey Constitution. [109, 118, 119, 122, 126-127]

Specifications of Errors to Be Urged

The Supreme Court of New Jersey erred:

(1) In failing to hold that Article I, paragraphs 3 and 4, of the New Jersey Constitution, as construed and applied, deprived The Gideons, petitioner herein, parents and their children attending the school, who wanted to receive the nonsectarian volume of selected Scriptures, of their right to freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution;

(2) In holding that the separation clause of the First Amendment, made applicable to the states, prohibited the distribution at and through the school to the students of the nonsectarian volume of selected Scriptures, which right was guaranteed by the freedom of the press provisions of the First Amendment to the United States Constitution;

(3) In holding that selected parts of the Bible, published and distributed by petitioner, The Gideons, without comment, is sectarian, so as to be prohibited by the First and Fourteenth Amendments;

(4) In placing a construction upon the First Amendment which makes it inconsistent and brings the separation clause into conflict with the freedom of the press clause contrary to the intention of the authors and adopters of the Amendment;

(5) In discriminating against the petitioner, The Gideons, contrary to the equal protection clause of the Fourteenth Amendment to the United States Constitution by holding the volume of selected Scriptures distributed by said petitioner was sectarian and within the ban of the separation clause while the distribution of the same Scriptures by other persons in the case of *Doremus* v. *Hawthorne* (5 N. J. 435 (1950), appeal dismissed 342 U. S. 429) was not a violation of the doctrine of separation of church and state;

(6) In reversing the judgment of the trial court.

Summary of Reasons for Granting the Writ

The Supreme Court of New Jersey has decided a federal question of substance and of nation-wide public importance.

I.

This question has been decided in a way probably not in accord with the applicable decisions of this Court.

The decision below has disposed of the federal question of substance—

(1) By construing and applying a state statute, the Constitution of New Jersey, so as to prohibit the right (under the First and Fourteenth Amendments) of petitioner, The Gideons, to distribute and the right of desirous parents and their children who are students (represented by the petitioner, The Board) to receive the nonsectarian volume of selected Scriptures in a way probably not in accord with other applicable decisions by this Court (*Jamison* v. *Texas*, 318 U. S. 413; *Fowler* v. *Rhode Island*, 345 U. S. 67);

(2) Concerning the doctrine of separation of church and state under the First and Fourteenth Amendments, so as to prohibit the distribution of the nonsectarian volume, in a way probably not in accord with other applicable decisions by this Court (*Zorach* v. *Clausen*, 343 U. S. 306; *Everson* v. *Board of Education of Ewing Township*, 330 U. S. 1; compare *McCollum* v. *Board of Education*, 333 U. S. 203);

(3) Concerning the right of petitioners to equal protection of the laws and freedom from discrimination under the Fourteenth Amendment in a way probably not in accord with other applicable decisions by this Court (*Skinner* v. *Oklahoma*, 316 U. S. 535; *Yick Wo* v. *Hopkins*, 118 U. S. 356);

(4) By making findings of fact of sectarianism based solely upon the personal religious objections of respondent

and the opinion of his experts, thereby ruling on a federal question in a way probably not in accord with *Chambers* v. *Florida,* 309 U. S. 227, 228-229, and *Craig* v. *Harney,* 331 U. S. 367, 373-374.

II.

In the event this Court finds that there is no probable lack of accord with any applicable decisions by this Court, then the petitioners say that the Supreme Court of New Jersey has decided federal questions of substance (listed on pages 11 & 12, .supra) which have not heretofore been determined by this Court but which ought now to be decided by this Court.

Discussion showing substantiality and importance of the questions involved which shows why the writ of certiorari should be granted

I.

The Constitution of New Jersey, Article I, paragraphs 3 and 4, has been construed and applied so as to bring it into conflict with the First and Fourteenth Amendments to the United States Constitution because the prohibition of the distribution of nonsectarian volume of selected Scriptures by The Gideons to the children with the approval of the parents and the petitioner, The Board, abridges the petitioners', the parents' and the children's rights to freedom of press.

The entirety of the First Amendment was relied upon by the parties in their pleadings in the trial court. [3, 4] The Board in its answer alleged that the distribution of the volume did not violate the parts of the Constitution referred to. [8, 10] The petitioner, The Gideons, alleged that its distribution did not violate the provisions of the Federal Constitution relied upon by the respondent. [14] The courts below considered whether the distribution of

the volume was protected by the First and Fourteenth Amendment. The trial court found in favor of petitioners but the Supreme Court of New Jersey concluded that the distribution of the volume was not protected but was prohibited. [109, 118, 119, 126-127]

Petitioners relied upon the whole of the First Amendment. They claimed that its distribution was constitutional. The interpretation of the whole of the First Amendment, the freedom of the press clause as well as the separation clause, was before the courts below. The mere mentioning of the First Amendment in the pleadings and the opinions below was enough to involve the freedom of the press clause and also the separation clause of the First Amendment.

This Court has held that it is not necessary to specify the various clauses of the articles of the Constitution and the Amendments. It has been declared that where the questions were necessarily involved in the decision so that judgment could not be rendered without their consideration the federal questions are considered properly raised.—*Williams* v. *Bruffy*, 96 U. S. 176; *Chapman* v. *Goodnar*, 123 U. S. 540; *Powell* v. *Brunswick County*, 150 U. S. 433; *Sayward* v. *Denhy*, 158 U. S. 180.

The federal claim here made that there was a denial of freedom of the press should be considered by this Court under the doctrine of *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67. In that case the Court said: "If the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented."

Assume that it be regarded that the specific protection of freedom of the press provisions of the First Amendment was not fairly presented to the state courts. This does not prevent consideration of the question. The reason it may be considered is that the First Amendment itself was pleaded and discussed by the petitioners and the re-

spondents. Consequently under the doctrine of *Terminiello* v. *Chicago,* 337 U. S. 1; *Stromberg* v. *California,* 283 U. S. 359; and *Williams* v. *North Carolina,* 317 U. S. 287, 292, this Court should consider this specific point presented in this petition.

The petitioners here, as far as the sufficiency of their pleadings is concerned, raised a federal question and they stand in the same position before this Court as did the petitioner in *Minersville School District* v. *Gobitis,* 310 U. S. 586, and the appellant in *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624. If the pleadings there raised the issue sufficiently to permit this Court to hear all arguments by the school boards, they are sufficient to support The Board and The Gideons here.

The Board represents the parents and children who desire to receive the volumes of selected Scriptures distributed by The Gideons, petitioner. The Board, therefore, has the right to assert that the constitutional rights of such natural persons represented by it to freedom of press guaranteed by the First Amendment are denied.

The petitioner, The Gideons, it is true, is a private corporation. Yet it has the right to urge that its right to distribute literature guaranteed by the First and Fourteenth Amendments is denied. These fundamental rights to freedom to print and freedom to distribute belong to a corporation as well as to natural persons.—*Pierce* v. *Society of Sisters,* 268 U. S. 510; *Grosjean* v. *American Press Co.,* 297 U. S. 233, 244; *Louis K. Liggett Co.* v. *Baldridge,* 278 U. S. 105; *Massachusetts* v. *Mellon,* 262 U. S. 447; *Home Ins. Co.* v. *New York,* 134 U. S. 594; *Covington & L. Turnpike* v. *Sanford,* 164 U. S. 592; *Smyth* v. *Ames,* 169 U. S. 522; *Douglas* v. *Jeannette,* 319 U. S. 157.

Since The Gideons owned the volumes and distributed them, it, as a private corporation, has the same right to rely on the freedom of the press provisions of the First and Fourteenth Amendments to the United States Constitution as do natural persons.

A state statute has been interpreted by the Supreme Court of New Jersey so as to prohibit absolutely the distribution of literature to persons entitled to receive it. The statute is embodied in the separation of church and state provisions of the New Jersey Constitution, Article I, paragraphs 3 and 4. The term "statute" as used in federal jurisprudence means also a state constitution.—*Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U. S. 525; *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538; *Adamson* v. *California*, 332 U. S. 46, 48.

When a state law has been construed and applied, as this one has been, so as to completely prohibit the distribution of literature or absolutely forbid freedom of speech, it is invalid. *Jamison* v. *Texas*, 318 U. S. 413; *Fowler* v. *Rhode Island*, 345 U. S. 67. The state statute, the Constitution of New Jersey, has been construed so as to prohibit absolutely the distribution of selected parts of the King James Version Bible at and through the schools of New Jersey. This construction of the law makes it unconstitutional because it conflicts with the freedom of press provisions of the First Amendment which strikes down the State Constitution, as construed and applied. This is done by force of the Fourteenth Amendment.

The law of New Jersey gives the petitioner, The Board, the legal right to choose the textbooks for students and arrange for Bible reading daily. The Board, therefore, had legal authority to enter into an agreement or arrangement for the distribution of approved literature to students whose parents were willing for them to receive it. Since the school board had the legal right to arrange with the petitioner, The Gideons, for the distribution at or through the school it must be said that the place of distribution was proper.—*Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793; compare *Marsh* v. *Alabama*, 326 U. S. 501, *Tucker* v. *Texas*, 326 U. S. 517.

It may be argued that petitioner, The Gideons, should go to the homes of the parents or call from door to door to locate the students and their parents. Other arguments may be raised such as that the petitioner, The Gideons, may use the radio or resort to the mails for distribution of the volume. These are specious arguments. They have a factitious basis. Such arguments have been rejected by this Court before. It has been held by this Court that one is not to be denied the right to distribute literature at a natural or proper place "on the plea that it may be exercised in some other place."—*Schneider* v. *New Jersey,* 308 U. S. 147, 162.

It is submitted, therefore, that under this ground the Court has authority to grant the writ of certiorari.

II.

The distribution of the nonsectarian volume of selected Scriptures by The Gideons is permitted by the separation clause of the First Amendment to the United States Constitution, when properly interpreted; therefore the holding of the Supreme Court of New Jersey makes the amendment ambiguous and brings the separation clause into conflict with the freedom of press clause.

The Supreme Court of New Jersey stumbled into the pit of error when it decided in this particular case that the particular Bible distributed by these particular petitioners is sectarian under the separation clause of the First Amendment. The court held that the issue was sectarianism in this case because the one invoking the separation clause had objected to the distribution of the New Testament. It said that if the Old Testament had been involved the situation might be different.

In order to outlaw the New Testament and evade a charge of patent inconsistency by sustaining the practice in *Doremus* v. *Hawthorne,* 5 N. J. 435, appeal dismissed

342 U. S. 429, the court below built a castle on sand—expert testimony. The court said: "The charge here is sectarianism." [118] "A review of the testimony at the trial convinces us that the King James version or Gideon Bible is unacceptable to those of the Jewish faith." [120] "The defendant refers us to various statements by legal scholars and others to show that the Bible is not sectarian, but rather is the universal book of the Christian world, but in many of these statements the question of the New Testament was not discussed." [121] "We adhere to the *Doremus* case, but its holding does not apply here, where clearly the issue of sectarianism is present. Here the issue is the distribution of the New Testament. The uncontradicted evidence presented by the plaintiff reveals that as far as the Jewish faith is concerned, the Gideon's Bible is a sectarian book, the teachings of which are in conflict with the doctrines of his religion as well as that of his child, who is a pupil in the Rutherford public school." [122] "We find from the evidence presented in this case that the Gideon Bible is a sectarian book." [122]

The evidence relied upon by the Supreme Court of New Jersey was the expert testimony by theologians and educators. The court first quoted Rabbi Prinz. [120] This testimony appears in the record. [27-29] The court then quotes Rabbi Bamberger. [121] This testimony appears in the record. [37-38] The opinion of educator Isidore Chein was relied upon. [124] This testimony appears in the record. [43] The opinion of Professor Dodson was taken into consideration. [124, 126] This appears in the testimony. [55-56] The court also relied upon the opinion of Doctor Kilpatrick. [126] This appears in the record. [59]

Under the Constitution of New Jersey perhaps it could be said that the opinion evidence is basis in fact for the holding that the separation clause of the state constitution is violated. The reason is, it was a state question and findings by the state court on fact problems incidental to state

questions cannot be questioned here. But when it comes to taking away petitioner's rights under the United States Constitution from them by expert opinion evidence, another question is presented. It is: May the right to examine the evidence and reach its independent judgment by this Court be taken away and the opinion of the experts there be substituted for the opinion of this Court? The answer is that the experts cannot invade the province of this Court and petitioners cannot be deprived of their federal rights by the court below based solely on such opinion evidence.

This Court is free to make an independent examination of the facts when necessary to decide whether a person has been deprived by a state court of a fundamental right secured by the United States Constitution. In doing so it is not bound by the findings made by the state court.—*Norris* v. *Alabama,* 294 U. S. 587, 590; *Chambers* v. *Florida,* 309 U. S. 227, 228-229; *Ashcraft* v. *Tennessee,* 322 U. S. 143, 147-148; *Craig* v. *Harney,* 331 U. S. 367, 373-374.

All of the expert evidence and the findings of the state court based thereon should be rejected by this Court. The question whether the Bible is sectarian is not a matter of expert evidence. It is a matter of common knowledge that it is not sectarian and the common sense possessed by all men can decide the matter better than the experts. It is a question of law rather than of fact. The facts are not disputed except by opinion. The law question could not be made an esoteric fact question confined to the opinion of the experts called by the respondent.

Should it be held that the constitutional rights of the parties are to depend upon the type of testimony that each side of a case can muster from religious experts and the opinion of psychologists and educators, then constitutional rights would depend on the number and rank of experts called in a case and what they say, and not what the judges say. The rights of the people under the Constitution would

vary in each case. They would on the same facts vary in every case under the same law. There would be no more stability or *stare decisis* in the field of constitutional law. The reliance by counsel upon decisions in constitutional cases would become even more hazardous than it normally is. The iniquity of the innovation and unlimited results of the new constitutional doctrine invented by the court below is shown in the conflict between the decision of the Supreme Court of New Jersey in this case and the decision by the same court in *Doremus* v. *Hawthorne*, 5 N. J. 435, appeal dismissed 342 U. S. 429. It is high time for this Court to nip the new-born doctrine in the bud lest it grow into a devouring giant ultimately able to destroy the Constitution and the power of this Court to decide cases.

The procedure employed by the court below of basing the determination that the Bible is sectarian upon the private objections of the litigant is equally devastating of the Constitution as that of reliance upon expert opinion. In this case the Bible was declared to be sectarian because it contained the New Testament, which is objectionable to the Hebrews or the Jewish faith. This type of judicial determination is alien to the law of liberty. Whether a book is sectarian or not under the separation clause of the Constitution is made to depend, not on the contents of the book, but solely upon the objections of the student or parent of a student in school. This produces incongruous and grotesque results never dreamed of by the authors of the Constitution.

The next step would be to permit some modern-day religionist who is a higher critic of the Hebrew Scriptures or the Old Testament to make an objection to the distribution of the Old Testament. Then that part of the Bible would be declared to be sectarian and its presence in the schools or use of it declared to be invalid under the First Amendment. The process employed by the New Jersey Supreme Court in this case opens the door for a new action to re-

verse *Doremus* v. *Hawthorne,* 5 N. J. 435, appeal dismissed 342 U. S. 429. All that the plaintiff need say is that it offends his religious beliefs and views.

The innovation and invention of the court below may be used to spread the poisonous doctrine further. The Christian Scientists could object to the medical books and treatment of students by medicine in the schools as a violation of their religious principles. Then what is to prevent one with a new religion from objecting to the teaching of history or certain parts of history because, for one religious reason or another, it offends his so-called "religious" susceptibilities. Then exit history books from the schools!

The doctrine announced by the court below under the separation clause of the First Amendment places an undue amount of power in the hands of a minority. It has put the constitutional rights of the people in America in the same situation that the members of the United Nations are in. There the veto power can be used and is used to block the move of the majority. That is exactly what the court below has given to the minorities in any school in any community in the United States. It produces minority rule in the schools and deprives the rights of others to exercise their constitutional rights. The decision of the court below on this point has placed a premium upon the lone dissenter and made a mockery out of the Constitution. It produced an instrument of persecution of majorities by a one-man minority in control of a community through an illegal use of the separation clause of the First Amendment.

If the respondent and the New Jersey Supreme Court decision are right in principle, then watch out! Jehovah's Witnesses will be armed with an instrument to stop all flag saluting in school. They have genuine religious objections to the flag salute. They consider it a religious exercise that they refuse to participate in. *Minersville School District* v. *Gobitis,* 310 U. S. 586; *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624. They could come in and

make the same argument as that made by the respondent here. They could demand that the flag salute in the public schools be stopped altogether. They could say that the majority should not salute the flag at all in the public schools because the flag salute is sectarian to them and that since public schools are secular they must remain so. Even if the majority of pupils do it voluntarily they could say that the flag should be banished. They could say that the schools should not spend even a mill from our taxes in order to buy a flag for the school. By other personal objections stated in court they could say that it is a religious symbol and to salute the flag is a religious exercise. Using the ruling of the court below they could stop the national patriotic exercise now daily practiced in the schools.

If the line of reasoning used by the New Jersey Supreme Court is sound in principle, eventually every book to which any person may state his religious objection would be banished from the schools.

What is said here is not a condemnation of the practice of allowing taxpayers to bring suits to enjoin unconstitutional practices. It is entirely proper for one-man or class actions to be brought to restrain violations of the Constitution by state and federal employees. But what is objected to here is the establishment of a procedure by a state, which has been approved under the Federal Constitution, whereby any one person can take the separation clause and add to it his opinion that a practice is sectarian and use them to give sanctions to his religious objections to the nonsectarian practices by others. Here the respondent and his child have not been forced to violate their consciences. Their personal rights have not been violated. They have used their own consciences which have not been violated and the separation clause to violate the rights of others to distribute a volume of literature which is in fact not sectarian. This puts religious persecution into reverse. A curve ball is thrown to seekers of freedom under the Constitution. Surely the founding fathers did not intend this harsh and unjust result.

If the argument of the respondent and the holding of the court below be accepted then the use of the King James Version Bible in the federal courts to swear in witnesses and attorneys admitted to practice and judges when inducted into office would be a violation of the separation clause of the First Amendment to the United States Constitution. It would be prohibited in the Congress of the United States.

Even more far-reaching devastation is inherent in the state approval of the doctrine that separation of church and state forbids the incidental use of school property for nonsectarian distribution of the Bible. If this principle is sound, then tax exemption to churches and religious organizations in every community of the nation by state constitutions is imperiled. If the First Amendment forbids the incidental use of school property for Bible distribution, by force of the same reason it also denies authority to the states in their constitutions and the Congress in the District of Columbia to grant tax exemption to religious organizations and churches. In the case of tax exemption to religious organizations the loss of state funds is great and bears heavily upon the people. Here there is no use of school property at public expense.

Should the principle approved by the court below be sanctioned by this Court, then an opening wedge has been driven to split asunder and upset completely the holdings of this Court that the Constitution does not prohibit the exemption of churches.

It was unfair for the respondent [2] and the New Jersey Supreme Court [122] to call the volume (Exhibit P-6) a "Gideon Bible".

Since selected parts of the King James Version of the Bible distributed by The Gideons was held to be sectarian by the New Jersey Supreme Court principally because it was a "Gideon Bible", petitioners would like to point out:

(1) The Gideons are not a sect. There is no proof to that effect in the record. Sectarianism was defined by The Board but was not defined by the respondent's witnesses and was not defined by the New Jersey Supreme Court.

See Appendix "A" to this Petition for definitions of "sect", "sectarian" and "sectarianism" taken from all the unabridged, abridged, and law dictionaries which could be found in the Library of the United States Supreme Court.

Many who believe in and use or abuse the Bible are sectarian and come within these definitions, but the Bible itself does not. The Bible is not limited to denominational or partisan or sectarian interests. It is not a narrow or bigoted denominationalist.

(2) The Gideons are not the authors of any of the books of the Bible. The Gideons are not the translators of the book from any of the original languages to the English. The Bible called "Gideon Bible" by the New Jersey Supreme Court is no different from any other copy of the King James Version of the Bible without note or comment. If the "Gideon Bible" is not acceptable then the inescapable conclusion is that no translation and no Bible is acceptable.

Surely this Court cannot be charged with sectarianism. The Supreme Court's Bible used by the Clerk of this Court to swear in members of the Bar of this Court is the Word of God in the King James Version, including both the Old Testament and the New Testament. It is an edition printed in England in 1799. Because it was printed in England by the King's Printer, it, of course, contains the dedication by the translators to King James. The dedication is not part of the Bible, the Word of God, but is a commentary added by the translators. Some object to certain of the statements therein. The Bibles furnished by The Gideons (Exhibit P-6) do not include this dedicatory preface. Can it fairly be said by mature, reasonable men that the Supreme Court is a sectarian court because it uses the King

James Version of the Bible? No, a thousand times no! The Supreme Court is not sectarian because it uses the Bible and it cannot reasonably be said that petitioners have violated the antisectarian principle of the separation clause by distribution of the volume here. Nor is it (Exhibit P-6) a "Gideon Bible" or a sectarian book.

It does not make it become a "Gideon Bible" or sectarian because The Gideons bought the books and offered them to The Board. It would be just as fallacious to argue that when the Rutherford Board of Education orders and pays for Shakespeare's *Merchant of Venice* and puts its imprint on or in the book, the book could be properly characterized as a "Rutherford Merchant of Venice" or if in Hawthorne, New Jersey, a "Hawthorne Merchant of Venice." Or that if a parent bought an additional copy for his children to use in their school work and to keep for their permanent library rather than to return it to the school after the term and the parent had his family name imprinted on it, then he would become the author of the *Merchant of Venice.* The reasoning of the New Jersey Supreme Court gives the buyer or distributor of the volume credit for authorship or translation or revision.

We find a strange anomaly in the decision of the Supreme Court of New Jersey: any Bible bought and paid for by The Board [77] or given to the Rutherford or Hawthorne Schools is not a sectarian book under the decision in *Doremus* v. *Hawthorne,* 5 N. J. 435, appeal dismissed 342 U. S. 429, to which the New Jersey Supreme Court adheres by a statement in its opinion in this case. These are perfectly satisfactory according to that court for the compulsory and permissive Bible reading program. But a Bible in the King James Version, similarly bought and paid for by The Gideons and given to the Board for free distribution to those children whose parents consent in writing, suddenly and strangely becomes a sectarian book under this decision and is not satisfactory for voluntary Bible reading.

The decision of the New Jersey Supreme Court that the volume is sectarian is contrary to the weight of authority in other States.—See the cases cited in *Doremus* v. *Hawthorne*, 7 N. J. Super. 442.

The holding that the Bible is sectarian by the New Jersey Supreme Court is in conflict with the two New Jersey statutes quoted and is in conflict with its own prior decision in *Doremus* v. *Hawthorne*, 5 N. J. 435, appeal dismissed 342 U. S. 429.

A word should be said concerning the object of The Gideons. A copy of the Constitution and Bylaws of The Gideons was introduced as Exhibit P-7. Throughout the course of the proceedings respondent criticized the purpose of The Gideons "to win men and women for the Lord Jesus Christ," as if that purpose were improper. This made its impression on the Supreme Court of New Jersey. The Chief Justice singled it out for use in the first sentence of his opinion. [106] He again referred to it. [126]

The Gideons contend that the purpose is legal; that it is right in the line of American tradition; that it does not make the association or its purpose sectarian; and that its motives in distribution of the nonsectarian volume are irrelevant to the issue. It is the character of the book that determines whether it is or is not sectarian. The motive of the distributors is wholly immaterial. It is no sin for The Gideons to be a missionary organization. It can work for the welfare of the school children of the Nation by giving the nonsectarian book away free of charge without violating the Constitution.

Respondent's contention is irrelevant in connection with the work of The Gideons in the school field, because the parents and children were not informed of the chartered purpose of The Gideons. The purpose of the charter does not appear in the volume distributed (Exhibit P-6). This, we emphasize again, is without note or comment. The

members of The Board were not informed of the chartered purpose of The Gideons. It was testified by the supervising principal that there were no general assemblies concerning this distribution. He said no representative of The Gideons was present at any class meeting or assembly and that no tracts or epistles of any kind were furnished and that there was no solicitation. [72]

If the children who want to read the Bible are won for Christ through the distribution of the volume, it is not because of anything that The Gideons say to them. It is or will be solely because of what the word of God (without note or comment) says to them.

The object expressed in the Constitution of The Gideons does not make it a sectarian organization. The chartered purpose is not to win men and women to any particular creed, dogma or sect. It is not to win members for the Baptists, Presbyterians, Methodists, Unitarians or Swedenborgians. It is not to make them sectarian. It is only the nondenominational purpose to win them to a vital relationship to Jesus Christ. Because of His sovereignty (the whole being greater than any part) petitioners contend that that is not a sectarian or denominational purpose. It is a perfectly legal nondenominational, nonsectarian and democratic purpose in the American way of life. Bible distribution in the schools by The Gideons does not make the Bible sectarian.

The importance and the nonsectarian position of The Great Textbook in American education is shown by many leaders in Government and in education. Many could be cited but we restrict ourselves to just a few.

William Lyon Phelps was for forty years a teacher in Yale University. For over thirty years he held the Chair of Lampson Professor of English Literature, in addition to being the public orator of Yale. In his book *Human Nature in the Bible* (1922 Scribner) he wrote:

"Everyone who has a thorough knowledge of the Bible may truly be called educated; and no other learning or culture, no matter how extensive or elegant, can, among Europeans and Americans, form a proper substitute. Western civilization is founded upon the Bible; our ideas, our wisdom, our philosophy, our literature, our art, our ideals, come more from the Bible than from all other books put together. It is a revelation of divinity and of humanity; it contains the loftiest religious aspiration along with a candid representation of all that is earthly, sensual and devilish. I thoroughly believe in a university education for both men and women; but I believe a knowledge of the Bible without a college course is more valuable than a college course without the Bible."—Page IX of introduction.

In his book, *Reading The Bible* (1935 MacMillan) Professor Phelps wrote:

"The so-called Authorized or King James Version of the Bible, published in 1611, is the most influential book in English literature."—Page 10.

"The Bible is not only the foundation of modern English literature, it is the foundation of Anglo-Saxon civilization. It seems a narrow and mistaken policy to drive it out of the public schools. When I was a boy every day in school began with a chapter in the Bible and the Lord's Prayer; surely there was nothing sectarian about that. The Hebrew and Christian religions compare favorably with the Greek and Roman, with which we were compelled to familiarize ourselves at school, and, so far as I know, without protest from any source. If the Greek and Roman gods and goddesses were alive today, every one of them would be in jail."—Pages 15-16.

'The Bible has been a greater influence on the course of English literature than on all other forces put to-

gether; it is impossible to read standard authors intelligently without knowing something about the Bible for they all assume familiarity with it on the part of their readers."—Page 17.

"As the Bible, day by day, exerts its regenerating and vivifying spiritual influence on the souls of men, so its sublime and homely poetry and prose recreate in the masterpieces in all literature which rise from the inexhaustible spring of living water in the Word of Life."—Page 131.

Daniel Webster wrote the following:

"If religious books are not widely circulated among the masses in this country, and the people do not become religious, I do not know what is to become of us as a nation. And the thought is one to cause solemn reflection on the part of every patriot and Christian. If truth be not diffused, eror will be; if God and his word are not known and received, the devil and his works will gain the ascendancy; if the evangelical volume does not reach every hamlet, the pages of a corrupt and licentious literature will; if the power of the Gospel is not felt through the length and breadth of the land, anarchy and misrule, degradation and misery, corruption and darkness, will reign without mitigation or end."

In Lloyd Paul Stryker's new book, *The Art of Advocacy* (1954, Simon & Schuster), he makes a great many references to the King James Bible. At page 157, referring to Martin Littleton, he reports that he was given copies of Blackstone, Kent's Commentaries, and Chitty's Pleadings—returned them and was given Greenleaf, Story on Equity, Bishop's Criminal Law, and many others. One day his benefactor told him to read Shakespeare's plays, Burns' poems and Pltuarch's Lives, and as Martin left he said, "You had better take this too; there is more in this than

any other book," and handed him a copy of the King James Bible. He found a new job in a bakery attending the ovens at night. In the intervals between the turning of the loaves, he lay before the oven doors, and with the light from the fires, pored over the Bible and Burns' poetry.—Page 158.

"He spoke the mother tongue as he had found it in the King James Bible."—Page 163.

"The words he chose were short Saxon words, such as you might find in Shakespeare or Burns or the King James version, or Lincoln's messages and speeches."—Page 165.

Referring to Abraham Lincoln:

"The Bible was one of the earliest books he read and he read it to the last. The language of the King James Version became his language. No lawyer, no man, has ever attained his mastery of the English language."—Page 179.

We would like to show further the importance and the non-sectarian character of The Great Textbook from The Book itself by the following quotations from the Psalms, Proverbs and the New Testament, which books are included complete in Exhibit P-6:

King David said:

> "Wherewithal shall a young man cleanse his way? By taking heed thereto according to thy word."
>
> "The entrance of thy words giveth light; it giveth understanding unto the simple."
>
> "Thy word is very pure."
>
> "Thy word is true from the beginning: and every one of thy righteous judgments endureth for ever." (Psalms 119:9, 130, 140, 160).

King Solomon said:

> "The fear of the Lord is the beginning of knowledge: but fools despise wisdom and instruction." (Prov. 1:7).

"The fear of the Lord is the beginning of wisdom: and the knowledge of the holy is understanding." (Proverbs 9:10).

"The fear of the Lord is the instruction of wisdom: and before honour is humility." (Proverbs 15:33).

"For the Lord giveth wisdom: out of his mouth cometh knowledge and understanding." (Proverbs 2:6).

The Lord Jesus Christ said:

"I have given unto them the words which thou gavest me."

"Thy word is truth." (John 17:8, 17).

"Suffer the little children to come unto me, and forbid them not: for of such is the kingdom of God." (Mark 10:14).

Children are impressionable. Their thoughts and lives are being molded. The overwhelming majority receive more hours of instruction in the school than in the home and church combined. Instruction may be such that their lives are devoid of spiritual content, that they grow up to be secular and crassly material. The public school program may have, and does have, a large influence in that connection, and for some it is practically a "religion" to work to keep the school secular.

Other children, through other influences, may interest themselves only in the outer forms of religion. Multitudes have never read the Bible, but profess some religion or are adherents of some sect. They possibly may go to church once a year on Easter Sunday, or to the synagogue once a year for the observance of the Passover. That is their privilege. Many children because of the spiritual vacuum thus created, are open targets for anti-Godly Communism.

The Gideons contend that the issue today is "Christ or Communism." Children need spiritual guidance and instruction in morals and ethics even in the public schools. In the public schools this cannot be done by preaching, or by teaching a sectarian creed, dogma, and worship. It can and should only be done, by making available on a voluntary basis, the Word of God, without note and without comment.

We prosecute this petition to reverse the dangerous trend in the United States demonstrated by this case. We believe that if it gains momentum it will further engulf the land. If not stopped it will cause this nation to go into decline and fall, even as ancient Babylon, Medo-Persia, Greece and Rome. They went into decline and fell because they lowered their morals and ethics. What they did was: forget God and His Word, The Bible.

The court below grievously erred when it enunciated that "the Gideon Bible is a sectarian book," that this offer, acceptance and proposed distribution of Bibles caused "an establishment of religion" and prohibited Tudor from "the free exercise thereof" in violation of the First Amendment of the United States Constitution as made applicable to New Jersey by the Fourteenth Amendment. [122] The gift and distribution of the volume (Exhibit P-6) will not cause an establishment of religion and will not prohibit respondent and his child from the free exercise thereof. We say, on the other hand, that the injunction prohibiting the exercise of the freedom of the press in distribution of the volume and the striking of the resolution of The Board did and do deprive the 615 parents who signed request slips of their constitutional and God-given natural right guaranteed by the First and Fourteenth Amendments to select this book for their children.

It prohibited those parents and their children of the free exercise of religion. It abridged the freedom of speech and of the press of The Gideons and also the officers and agents of The Board in accepting and distributing the book

for the parents and students. It abridged the freedom of the press of the 615 parents and their children and more who might have requested the book if this lawsuit had not arisen and the decision below been made—all in violation of the First Amendment.

We say that when one set of circumstances is balanced against the other the rights of petitioners and the children far outweigh the rights of respondent and the rights of petitioners have the preference. It should be declared that the Bible is not a sectarian book banned by the separation clause of the First Amendment.

The greater weight of authority holds that even the sectarian use of the schools for holding church meetings is so slight and inconsequential as not to violate the doctrine of separation of church and state. See *Nichols* v. *School Directors* (1879) 93 Ill. 61; *School Directors* v. *Toll* (1909) 149 Ill. App. 541; *Hurd* v. *Walters* (1874) 48 Ind. 148; *Baggerly* v. *Lee* (1905) 37 Ind. App. 139, 73 N. E. 921; *Townsend* v. *Hagan* (1872) 35 Iowa 194; *Davis* v. *Boget* (1878) 50 Iowa 11; *Gibbert* v. *Dilley* (1914) 95 Neb. 527, 145 N. W. 999; *Greenbanks* v. *Bantwell* (1870) 43 Vt. 207; *Lagow* v. *Hill* (1909) 238 Ill. 428, 87 N. E. 369.[5]

Reliance has been placed by respondent upon *McCollum* v. *Board of Education*, 333 U. S. 203. This decision is not authority against petitioners. The principle of the *McCollum* case is limited to a constitutional prohibition of the use of school time and the course of instruction given the children through the compulsory education law to teach religious doctrines, creeds and principles.—*McCollum* v. *Board of Education*, 333 U. S. 203, 205, 209.

The issue in the *McCollum* case was confined to the precise problem of utilization of the compulsory education process and school system for religious training. It was

5 Other state decisions relating to this problem are interestingly collated and discussed in 5 A. L. R. 886, 7 A. L. R. 791, 52 A. L. R. 249, 86 A. L. R. 1181, and 161 A. L. R. 1308.

not based upon the proposition that public property cannot be used for the exercise of constitutional rights. If this Court so held it would have so stated explicitly. If a public school building is opened up by law and regulation for Bible reading then by force of the same reason Bible distribution cannot be kept away from the school. The doctrine of separation of church and state ordained in the First Amendment must not be distorted so as to itself become an abridgment of liberty. It would result in just that if the construction of the Constitution by the New Jersey Supreme Court is not corrected here.

The doctrine must not be stretched beyond the breaking point. Since the public streets and public parks cannot be withheld from religious organizations for exercise of their constitutional rights of free speech (*Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Marsh* v. *Alabama*, 326 U. S. 501) then public schools that have been opened for reading of the Bible by the legislature of New Jersey may not be denied to petitioners for distribution of the Bible.

The petitioners say this is within the doctrine of *Everson* v. *Board of Education of Ewing Township*, 330 U. S. 1, and they are not precluded from relief that they are seeking by the holding of this Court in *McCollum* v. *Board of Education*, 333 U. S. 203.

The decision of the New Jersey Supreme Court is contrary in principle to other decisions of this Court.

In *Vidal* v. *Girard's Executors*, 43 U. S. 127 (1844) Mr. Justice Story wrote as follows (page 200):

> "Why may not the Bible, and especially the New Testament, without note or comment, be taught as a divine revelation in the college—its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated? * * * Where can the purest principles of morality be learned so clearly or

> so perfectly as from the New Testament * * *. Where are benevolence, the love of truth, sobriety, and industry, so powerfuly and irresistibly inculcated as in the sacred volume? The testator has not said how these great principles are to be taught, or by whom, except it be by laymen, nor what books are to be used to explain or enforce them. All that we can gather from his language is, that he desired to exclude sectarians and sectarianism from the college, leaving the instructors and officers free to teach the purest morality, the love of truth, sobriety, and industry, by all appropriate means; and of course including the best, the surest, and the most impressive."

Church of the Holy Trinity v. *United States,* 143 U. S. 457 (1892), held that the American organic utterances "speak a philosophy of the entire people and affirm and re-affirm that this is a religious nation" and "these and many other matters which might be noticed add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation."

In *Zorach* v. *Clauson,* 343 U. S. 306 (1952), Mr. Justice DOUGLAS wrote in this case involving released time religious education:

> "It takes obtuse reasoning to inject any issue of the free exercise of religion into the present case * * *. We follow the *McCollum* case. But we cannot expand it to cover the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights a philosophy of hostility to religion."

It is submitted that the distribution of the volume here is no violation of the separation clause of the First Amendment.

III.

There was no evidence of religious persecution of the respondent and his child by distribution of the volume of selected Scriptures to others willing to receive it; therefore all the argument made by respondent and the discussion of religious persecution in the opinion below have no place in this case.

In the briefs and the arguments in the court below the respondent talked ninety percent of his time about religious persecution. This was a scarecrow erected in the field of law involved here. And it frightened the Supreme Court of New Jersey! Yet there was no proof or suggestion or logical inference of persecution that could be drawn from the fact of the harmless distribution of the volume of selected Scriptures.

In the opinion by the New Jersey Supreme Court there was a large amount of writing about religious persecution. The court sketched the development of Christianity and of religious persecution from Rome to the American Colonies. [106-118] While it is interesting reading it has nothing whatever to do with the question of law involved. The respondent was not harmed when he was given the constitutional right not to sign the written request for the harmless little volume of selected Scriptures given to others at the school. At no time was it forced upon him or was his child ostracized by his failure to request the free gift.

The respondent does not and cannot complain of the compulsory daily reading of the Lord's Prayer required by the statutes of New Jersey, which has been approved by the Supreme Court of New Jersey. If the mere handing to another child something that it wants to read embarrasses respondent's child, then Bible reading and prayer reading in the school subjects the respondent and his child to much greater embarrassment.

The suggestion of religious persecution in this case is fictional. It is ridiculous and purely imaginary. If the

argument of the respondent is accepted then the constitutional rights of every person could be taken away. Accept the position taken by the respondent that the distribution of the selected Scriptures be prohibited, because offensive to him! Then it will be necessary for this Court to reconsider all the long line of cases of Jehovah's Witnesses decided by it. Acceptance of that specious argument will spell the doom of the right to distribute any kind of literature, the contents of which may not be approved by any one person. Surely the framers of the Constitution did not have in mind such an unreasonable and oppressive result. The answer is in *Murdock* v. *Pennsylvania,* 319 U. S. 105, 115-116, where the suggestions made in a dissenting opinion in *Douglas* v. *Jeannette,* at 319 U. S. 166-182, were rejected by the Court as unsound.

The position of petitioners should not be considered as anti-Semitic. Because the respondent is a Jewish man and the Synagogue Council of America is prosecuting the matter does not prove anti-Semitism. Lest there be any misunderstanding about the attitude of The Board and The Gideons let petitioners here pay our tribute of respect to and love for the Jewish people.

We are mindful of the word of the Lord to Abram:

> "I will make of thee a great nation, and I will bless thee, and make thy name great; and thou shalt be a blessing: And I will bless them that bless thee, and curse him that curseth thee: and in thee shall all families of the earth be blessed." (Genesis 12:2-3).

We are mindful of what King David wrote in Psalms 122:6:

> "Pray for the peace of Jerusalem: they shall prosper that love thee."

The Gentiles and Christians owe a debt of gratitude to the Jewish people which we can never fully repay. From

among them came the holy men of God who wrote all the books of the Bible as they were moved by God's Holy Spirit (II Peter 1:21). From among them, after the flesh, came our Lord Jesus Christ, conceived of God's Holy Spirit, born of the Virgin Mary.

It is because we are mindful of these things and their inalienable rights under the Constitution that we would never compel them to read all of the Word of God, including the New Testament. We believe that in their desire, and rightly so, to protect their oft persecuted people, and to prevent by all means all possible beginnings of any new persecution, they have in their zeal mistaken the cause of persecution and mistaken the means of preventing it. The stand they take here is to use the fear of possible persecution as an instrument or reason for oppression and deprivation of the rights of others. By this action in this case we belive that they are cutting off their own best insurance against persecution.

Where have the Jewish people suffered their worst persecution? Has it not been in Godless and anti-God Russia where the Bible has been spurned? Has it not been under Hitler in Germany where a hundred years before so-called "higher critics" began to cast doubt upon the historicity and the authenticity of the Bible, and doubting divines having sown the seeds of doubt and denial, prepared the soil for Hitler's Aryan ascendency, Bible banishing and mass murder of the Jewish people? Has not their best protection and refuge been in Bible-loving Holland (its record and tolerance referred to by the Chief Justice in his opinion [113]) and in Bible-based America where by official proclamation of President F. D. Roosevelt, a Bible-recommending President, these United States were thrown open as a refuge to countless Jewish displaced persons?

We grant the right of the Jewish children to be absent from school during their Jewish Holy Days. They may absent themselves, if they wish, from compulsory or per-

missive Bible reading in the public schools. They are allowed to believe that Jehovah is a unitarian God and not a trinitarian God, to believe that Jesus of Nazareth was born a Jew, died as a Jew and is not the Christ.

It is respectfully submitted that there is no persecution in this case and that the suggestions made by the respondent in the court below and by the Supreme Court of New Jersey should not be considered but rejected by this Court.

IV.

The compulsory reading of the Bible daily and the repetition of the Lord's Prayer for the students has been approved by the Supreme Court of New Jersey while the distribution of printed portions of the same Bible has been prohibited, which is discrimination in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

The decision below fails to give proper effect to and is out of harmony with applicable decisions of this Court as to equal justice under the law.

It is well settled that discrimination is a violation of the Constitution. The permitting of daily Bible reading and the reading of the Lord's Prayer to children while denying the right of petitioners to distribute the volume of selected Scriptures constitutes a denial of the equal protection of the laws required by the Fourteenth Amendment.

This discrimination by the administrative agency and the approval thereof by the courts below are out of harmony with and are in conflict with *Skinner* v. *Oklahoma,* 316 U. S. 535, and *Yick Wo* v. *Hopkins,* 118 U. S. 356.

It is petitioners' privilege to distribute the volume to other children. It is respondent's unequivocal right not to accept it. His rights go no further.

The only difference between the approved procedure and disapproved procedure is that in one the student gets the words orally and in the other he receives them through the eye by print. Here the crime committed by petitioners seems to be the one known to the Dark Ages of printing and publishing. The distinction made by the court below is a distinction without any difference and is without any basis in law. It is rank judicial discrimination to thus interpret the State Constitution. It has been brought into conflict with the Federal Constitution by reason thereof.

It is submitted, therefore, that to approve the oral reading of the Bible and the Lord's Prayer and to condemn the printing and distribution of them is a denial of equal protection of the laws contrary to the Fourteenth Amendment to the United States Constitution.

V.

There is no adequate non-federal question that is broad enough, independent and adequate enough to wholly support the judgment of the Court below.

It is true that the judgment of the court below is based on both the State and Federal Constitutions. The doctrine of separation of church and state is found in Article I, paragraphs 3 and 4, of the New Jersey Constitution and also in the First Amendment to the United States Constitution. The Supreme Court of New Jersey held that the mandate of this doctrine prohibited the distribution of the volume of selected Scriptures in question.

The decision of the court below was not sufficiently "broad to maintain the judgment" below without reference to the federal question. *Murdock* v. *Memphis,* 20 Wall. 590, 636; *Hale* v. *Akers,* 132 U. S. 554, 564-565. It was so "intermingled with that of Federal right that the former cannot be considered as an independent matter."—*Moran* v. *Horsky,* 178 U. S. 205, 208; *Bacon* v. *Texas,* 163 U. S. 207, 226-228.

The only basis for argument that the judgment is supported by a non-federal ground is that the court below under the State Constitution found that the King James Version of the Bible in this case was "sectarian". This was because one person objected to it and called up his regiment of experts to war against the King James Version of the Bible. Without this illegal finding there is no basis whatever for the so-called non-federal ground in this case. This same finding has been used by the state court to destroy the petitioners' rights under the First Amendment. A conclusion of federal law has been so intermingled with the state question by the Supreme Court of New Jersey as "to make it necessary, in order to pass upon the Federal question, to analyze the facts."—*Fiske* v. *Kansas,* 274 U. S. 380, 385-386.

The rule of this Court announced in *Bryan* v. *Hubbell Bank,* 289 U. S. 753; *Minnesota* v. *National Tea Co.,* 309 U. S. 551; and *Lynch* v. *New York ex rel. Pierson,* 293 U. S. 52, does not apply. In those cases a state administrative regulation was declared invalid under both the state and federal constitutions. While a state school board resolution has been similarly treated in this case under both constitutions the situation is entirely different. Here is why!

In those cases no private rights guaranteed by the United States Constitution were deprived by the ruling. There all that was left to be determined after the final state court judgment was an academic question in each case. The reason was that the state officials seeking review by this Court did not have any right guaranteed by the Federal Constitution. No federal right was taken away. But here The Gideons have been deprived of their freedom of press and freedom to contract with petitioner, The Board. This is a federal right. Here also the federal rights of over 600 parents and school children to receive literature are involved. They are represented by the petitioner, The Board.

Their rights are guaranteed by the First Amendment to the United States Constitution. These persons are represented before this Court by The Board.

Another vital and manifest difference exists here from that line of cases involving state officials who seek review of state court decisions invalidating state administrative orders under the state and federal constitution. There they did not show that the state constitutions violated the federal constitution.

The big thing here is that the State Constitution (Article I, paragraphs 3 and 4) has been construed and applied by the Supreme Court of New Jersey so as to bring it into conflict with the First Amendment to the United States Constitution. This is because the separation doctrine in the State Constitution deprives petitioners of federal rights guaranteed by the freedom of the press clause of the First Amendment to the United States Constitution.—Compare *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U. S. 525; *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538; *Adamson* v. *California*, 332 U. S. 46, 48.

The Court here should consider that (1) the finding of sectarianism so as to evade reality: that the King James Version Bible is not banned by the separation clause of the First Amendment; (2) the intermingling of the state and federal questions; (3) the lack of adequacy and independence of the state question; (4) the existence of deprivation of federally secured rights by enforcement of the state question; (5) and the conflict between the state and federal constitutions—all put out of this case any basis for reliance by respondent upon a non-federal question.

It is submitted, therefore, that there is no adequate and independent non-federal ground on which to wholly support the state court judgment, as a ground for denial of certiorari.

VI.

The questions presented here are of such great and nationwide importance that such reasons alone provide a basis for granting the writ of certiorari.

Chief Justice VANDERBILT, for the Supreme Court of New Jersey emphasized the magnitude and importance of this case. He said: "We are here concerned with a vital question involving the very foundation of our civilization." [126]

The decision of the court below disrupts and disorganizes completely throughout the United States the practice of distributing Bibles through the schools. For over one hundred years it has been the general practice, with or without legislative authority, to permit Bible reading in schools.

The effect of the decision of the court below is far reaching. The constitutionality of the policy of many states allowing school Bible reading is imperiled. Thousands of communities and hundreds of thousands of people may be affected if the erroneous doctrine approved by the state courts below is not received by this Court and determined.

The principle, if not reviewed by this Court, will give rise to further discriminations and denials. If Bible distribution can be denied because it is not popular with one person of the local community, then what is to prevent the Bible from being read in school buildings when objected to by one person.

Should the principle approved by the courts below at the instance of respondent be sanctioned by this Court, then an opening wedge has been driven to split asunder and upset completely the educational policy of thousands of public schools.

The approval of the principle that separation of church and state precludes Bible distribution presents a national anomaly. It has produced a grotesque inconsistency that

affects the rights and liberties of all of the people of the nation. Should that principle be allowed to stand, the people of the nation will not know what is protected and what is prohibited by the First Amendment.

The guarantee of freedom of religion in the First Amendment needs to be defined so that the doctrine of separation of church and state may have its boundaries fixed. That has not yet been done by this Court. The existing inconsistency is confusing. The ambiguity in the First Amendment, as it has been interpreted and construed by the court below, should be terminated through an immediate clarification by this Court.

This case is important beyond its particular facts and parties. Not only are petitioners and the respondent concerned, but all school boards throughout the nation are concerned. The Gideons International has plans to make its offer eventually to every school in these United States. It will make the offer a continuing annual gift as new pupils come into the fifth grade. The Gideons to date have given almost ten million copies of the volume (Exhibit P-6) to public and private schools in every state of the Union. This has involved a direct cost to it of over three million dollars for these free volumes. As the program gains momentum it contemplates the gift of over thirty million free copies within the next decade at a cost of over ten million dollars.

This matter has engaged the time of tens of thousands of school board members, staff officers and teachers to make the arrangements. Thousands of school board lawyers have had to check the legality and constitutionality of the program and methods of distribution. It is admitted to be proper to distribute Shakespeare and Dickens to the children at taxpayers' expense. This is usually required reading and without the consent of the parents. If it is illegal and unconstitutional to distribute the Bible, without expense to the taxpayers (except for a consent slip) only to

children whose parents have requested it, school boards of the nation should know this by a clear cut decision of this Court. If the program is constitutional, and we believe it is, school boards should likewise be told by this Court. The question is too big to let the Supreme Court of New Jersey have the last word.

The decision below concerns an important question involving morals. Directly and indirectly the morale and the welfare of the Nation are at stake. It is of importance to all parents and to all children in the Nation. This Court will take judicial notice of the fact of the increase of delinquency (juvenile and parental) and of vandalism in the public schools. There is an increase in crime from murder down, among young people of school age as reported by the Federal Bureau of Investigation,[6] by legal periodicals, newspapers and magazines all over the country. Lack of Bible reading and practicing its precepts is a contributing factor. We cannot measure here and probably no one can measure to what extent indifference to or neglect of juvenile and adult Bible reading has caused indifference toward divine as well as temporal authority and sovereignty. We cannot ignore the extent it has caused crime, delinquency, openness to Communism and other subversive influences. A general lowering of the moral tone and righteousness of the nation comes from this absence of Bible reading. The offer of the harmless little volume (Exhibit P-6) is considered by petitioners to be one important measure to help stem the tide. The Constitution does not take this privilege away from the petitioners in this case to do their part in fighting crime and delinquency.

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6 As this Petition is being completed, the Associated Press reports from Washington, D. C. under date of April 20: "The Federal Bureau of Investigation reported today that major crimes in the United States rose 6% last year to an estimated total of 2,159,080 offenses."

"'Crime is outstripping population rate of growth four to one,' the Bureau said in its annual bulletin, Uniform Crime Reports." * * *

"Arrests of young people—those under 18—rose 7.9% in 1953, while adult arrests increased 1.9%."

This case is of great importance to over ten thousand businessmen of America. They constitute the membership of The Gideons in the United States. They believe Bible distribution to be the best American instrument to fight crime and Communism. They have taken time and gone to substantial personal expense to cause Bibles to be printed, conduct correspondence, call on school boards, deliver the Bibles and help in distribution. If this gift distribution of the Bible to only such parents as voluntarily choose it for their children is unconstitutional, The Gideons should be told it by a clear-cut decision of this Court. Without word from this Court now they do not know whether to change their policy on a nationwide basis or not. If it is legal they should be given the green light. If it is for the welfare of the nation and saves the taxpayer money, the constitutionality of the program should be determined now by the Court.

The Synagogue Council of America and the National Community Relations Advisory Council submitted an amici brief below. [110] Its organization, soon after The Gideons started offering these volumes of selected Scriptures, published a legal memorandum challenging the legality of this school Bible distribution program. Since December 7, 1953, such organizations have used the Rutherford decision in other states to stop Bible distribution in some schools. It is of importance to school boards, to parents and to children, to The Gideons and to the above-named organizations for the Supreme Court of the United States to tell them whether the Rutherford decision is binding only in New Jersey or has nationwide effect.

The matter is currently so important that in the case of *Doremus* v. *Hawthorne*, 5 N. J. 435, appeal dismissed 342 U. S. 429, somewhat similar although not identical, where many of the same principles were involved, Mr. Justice Douglas, Mr. Justice Reed and Mr. Justice Burton dissented. They felt that even in a taxpayers' suit there should be a decision on the merits and that where the clash of

interests is as real and as strong as in these matters, there is a case of controversy within the meaning of Article III, Section 2, of the Constitution.

Our founding Fathers in official documents variously named God the Father and Jesus the Christ as: Almighty God, Creator, Great Governor, Nature's God, our Lord and Supreme Judge.

The Bible in Revelation 19:16 names the Lord Jesus Christ in His second coming in glory as "King of Kings and Lord of Lords".

Blackstone says (Chase 4th ed., pages 3-7), "This will of his Maker is called the law of nature. * * * This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original. * * * Divine Providence * * * hath been pleased, at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures."

Since He is Almighty God (and our New Jersey Constitution truly says that He is) it is right that all, including children attending the public schools, should read His mighty Word;

Since He is the Creator of all (and our Declaration of Independence truly says that He is), it is proper that all of His creatures should have opportunity everywhere to read what He has to say to them;

Since He is the Great Governor (and the Articles of Confederation truly say that He is); it is good that all should know His executive orders;

Since He is Nature's God (and our Declaration of Independence truly says that He is) naturally all should learn the laws of nature from His law book;

Since He is our Lord (and the Constitutions of the United States and of New Jersey and of countless official papers truly say that He is), He is sovereign and all His subjects should have the right and the privilege to read His gracious Word;

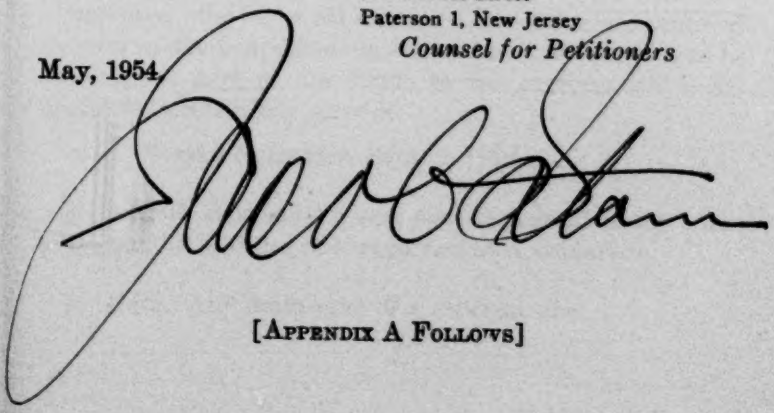
Since He is the Supreme Judge of the world (and our Declaration of Independence truly says that He is) He has a position of authority even higher than the exalted position of this Court; and it is right that all, including the youngsters in the public schools, and the elders on this Court, should hear and heed His righteous judgments and His beneficent decrees.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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May, 1954.



[APPENDIX A FOLLOWS]

APPENDIX A (Definitions)

SECT — UNABRIDGED DICTIONARIES

Sect, n. 1. A body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system. Specif.: (1) The adherents collectively of a particular creed or confession; a denomination; communion; as, the Presbyterian *sect;* the various *sects* of Jews, Mohammedans, or Christians. (2) Especially, an organized body of dissenters from an established or older form of faith; often with derogatory implication; as, the *sects* of the Gnostics; the *sect* of the Montanists. (3) The body of adherents of a particular philosophical system or teacher; a school of a particular system of philosophy; as, the *sect* of Utilitarians.

The purest and most exalted philosophic *sect* of antiquity was 'the sect of Stoics.'

FARRAR *Seekers after God, Seneca,* intro. p. 5 [MACM.]

2. Any number of persons united in opinion or interest, as in the state or in society; a party or faction; an order.

Socrates, who is by all accounts the undoubted head of the *sect* of the henpecked, owned and acknowledged that he owed great part of his virtue to the exercise which his useful wife constantly gave it.

STEELE *Spectator,* Sept. 9, 1712.

3. A kind; especially, a sex; obsolete except in the latter sense, and in that use now regarded as a vulgarism.

4. *Math.* Any finite part of a straight line.

5. A profession.

6. Garb, guise, likeness.

[(*derived from*) F. secte, (*from*) LL. secta (*from*) L. *secta*, faction, way school, (*from*) *secta*, f. of *sectum*, pp. of *seco*, separate].

Syn.: church, communion, denomination, heresy, heterodoxy, party, schism, school. *Heresy* or *heterodoxy* is a departure from the established doctrine; a *schism* is a division of the *church* either on matters of faith or practice; *schism* is applied also to non-religious organizations. A *sect* or *denomination* is an organized body of believers distinct in doctrine or in practice, or in both, from others; *sect* is an *opprobrious* and *denomination* an honorable term for the same body. Within a *denomination* there may be *schools* differing in minor matters, or *parties* favoring or opposing certain persons or measures without breach of essential and organic unity. *Church* is often used as synonomous with *denonimation;* as, the Methodist *Church*, the Presbyterian *Church*. The member of a state *church*, or those who represent a foreign state *church*, commonly apply the name *church* only to their own organization, terming all other religious bodies *sects*. *Communion* designates those who share a common faith, rather with reference to their spiritual unity than to their organization or their relations to other bodies of believers as, the Roman Catholic *communion*, the Lutheran *communion*.—*Sect-master*, *n.* The founder or leader of a *sect*.

FUNK & WAGNALLS NEW "STANDARD" DICTIONARY * * * OF THE ENGLISH LANGUAGE. New York, Funk & Wagnalls Company, 1952. p. 2213.

Sect, *n.* [ME *secte*, Fr. *secte*, a sect or faction, a troop, a company of one opinion; L. *secta*, a set of people, a following, a suit of clothes, a suit at law, from *sequi*, to follow, thus, lit. a following].

Appendix A (Definitions)

A body or number of persons following some particular teacher or leader, or uniting in some settled tenets, chiefly in philosophy or religion, but constituting a distinct party by holding sentiments different from those of another party or school; a denomination, especially, a religious denomination.

WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE, unabridged. Cleveland and New York, The World Publishing Co., 1951. p. 1540.

ABRIDGED DICTIONARIES

Sect, noun. 1. A body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system; specifically, the adherents collectively of a particular creed or confession; a denomination, or an organized body of dissenters from an established or older form of faith.

2. Adherents of a particular philosophical system or teacher.

3. Any number of persons united in opinion or interest, as in the state or in society; a party or faction, an order.

4. A cutting in horticulture.

[(*derived from*) F. *secte* (*from*) L. *secta*, faction, school, (*from*) *sequor*, follow].

Synonyms: church, communion, denomination, heresy, heterodoxy, party, schism, school.

FUNK & WAGNALLS NEW COLLEGE STANDARD DICTIONARY, *Em'*.pha.*type* edition. New York, Funk & Wagnalls [c.1953]. p. 1058.

Sect, n. [(*derived from*) Fr. *secte*, a company (*from*) Lat. *secta*, a faction, prob. (*from*) *sequi* (*secutus*) to follow].

Appendix A (Definitions)

1. A number of persons who, following a teacher or leader, hold a certain opinion or set of opinions; also, the doctrines or set of opinions held by such a group; a following, as of a certain philosopher or school of philosophy; as, the *sect* of Epicurus;

2. A religious denomination holding to a particular creed or practice: especially, a faction of dissenters from an established or orthodox church;

3. In a general sense, any group, party, or faction having the same associations or interests.

Syn.: faction, denomination, communion, body, party.

THE WINSTON SIMPLIFIED DICTIONARY: COLLEGE EDITION. Chicago, Philadelphia [etc.], The John C. Winston Company, 1936. p. 887.

Sect, n. A number of people united in ideas; constituting a distinct group; a denomination.

WORDS: THE NEW DICTIONARY. New York, Grosset & Dunlap [c.1947]. p. 512.

LAW DICTIONARIES

Sect. A religious denomination; the aggregate of those persons who adhere to, profess, or entertain the same religious creed, persuasion, or opinions. See Hale *v.* Everett, 53 N. H. 9, 16 Am. Rep. 82.

A denomination of religious persons having a common system of faith, either written or traditional. See State *v.* Trustees, 7 Ohio St., 38, 64.

Ballentine, James A[rthur]. LAW DICTIONARY WITH PRONUNCIATIONS. 1948 ed. Rochester, N. Y., The Lawyers Co-operative Publishing Company [c.1948].

Sect. A religious sect is a body or number of persons united in tenets, but constituting a distinct organization

or party, by holding sentiments or doctrines different from those of other sects or people. State *v.* Hallock, 16 Nev. 385; Evans *v.* Selma Union High School Dist. of Fresno County, 193 Cal. 54, 222 P. 801, 802, 31 A. L. R. 1121; Collins *v.* Kephart, 271 Pa. 428, 117 A. 440, 442; Bennett *v.* City of La Grange, 153 Ga. 428, 112 S. E. 482, 485, 22 A. L. R. 1312; State *v.* Frazier, 102 Wash. 369, 173 P. 35, 38; L. R. A. 1918 F, 1506; Knowlton *v.* Baumhover, 182 Iowa 691, 166 N. W. 202, 207, 5 A. L. R. 841.

BLACK'S LAW DICTIONARY. Third edition. St. Paul, Minn., West Publishing Co., 1933. p. 1593.

Sect or denomination. By P. S. Const. art. 3, [paragraph] 18, prohibiting appropriations to sectarian or denominational institutions, appropriations are invalid if made to any institution which is affiliated with a particular religious sect or denomination or is under the control or governing influence of such sect or denomination, the ordinary understanding of the phrase "sect or denomination" being a church or body of persons in some way united for purposes of worship to profess a common religious faith, and are distinguished from other bodies by a name of their own and it is immaterial that the institution in question may bestow its benefits on others and permits those outside the ranks of the sect or denomination to take part in its management. Collins *v.* Kephart, 117 A. 440, 442, 271 Pa. 428. • • •

WORDS AND PHRASES. Permanent edition. St. Paul, Minn., West Publishing Company [c.1940]. vol. 38, p. 453.

SECTARIAN — UNABRIDGED DICTIONARIES

Sectarian, 1. *a.* Pertaining to, peculiar to, or devoted to the interests of a sect or sects; especially, marked by attachment to a sect or denomination: often used in derogation as implying heresy or bigotry, and also as an oppro-

bious epithet for schools not sectarian but under the auspices of a denomination.

FUNK & WAGNALLS NEW "STANDARD" DICTIONARY * * * OF THE ENGLISH LANGUAGE. New York, Funk & Wagnalls Company, 1952. p. 2213.

Sectarian, a. and *n.* I. a. Of or pertaining to a sect or sects; strongly or bigotedly devoted to the tenets and interests of a particular sect or religious denomination.

II. *n.* A member or strong adherent of a particular sect, school, or religious denomination.

WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE, unabridged. Cleveland and New York, The World Publishing Co., 1951. p. 1540.

ABRIDGED DICTIONARIES

Sectarian, adj. Pertaining to a sect, bigoted. *noun* A member of a sect, especially, if bigoted.

FUNK & WAGNALLS NEW COLLEGE STANDARD DICTIONARY, *Em'.* pha. *type* edition. New York, Funk & Wagnalls [c.1953]. p. 1058.

Sectarian, adj. 1. Of, pertaining to, or like, a certain denomination or party: as, *sectarian* education;

2. Promotive of, or devoted to, a certain party or denomination, especially in religion: hence,

3. Of, pertaining to, or characteristic of, one who is bigotedly attached to a sect; narrow-minded.

noun. A member of a special school, denomination, or party; especially, one who is bigotedly attached to a sect or to its teachings.

THE WINSTON SIMPLIFIED DICTIONARY: COLLEGE EDITION. Chicago, Philadelphia [etc.], The John C. Winston Company, 1936. p. 887-8.

Sectarian, n. One who breaks away from an established church.

Also *adj.*

WORDS: THE NEW DICTIONARY. New York, Grosset & Dunlap [c.1947]. p. 512.

LAW DICTIONARIES

Sectarian. Pertaining to some one of the various religious sects. See People *v.* Stanley, —— Colo. ——, 255 Pac. Rep. 610.

Those religious doctrines are sectarian which are the doctrines of one religious sect and are not shared in common with other religious sects. See State *ex rel.* Weiss *v.* District Board of School District No. 8, 76 Wis. 177, 7 L. R. A. 330, 44 N. W. Rep. 967.

Ballentine, James A[rthur]. LAW DICTIONARY WITH PRONUNCIATIONS. 1948 ed. Rochester, N. Y., The Lawyers Co-operative Publishing Company [c.1948].

SECTARIANISM — UNABRIDGED DICTIONARIES

Sectarianism, n. Sectarian character or tendency; excessive devotion to or zeal for a particular sect or party; undue denominationalism.

FUNK & WAGNALLS NEW "STANDARD" DICTIONARY * * * OF THE ENGLISH LANGUAGE. New York, Funk & Wagnalls Company, 1952. p. 2213.

Sectarianism, n. The state or quality of being sectarian; adherence to or zeal for a particular sect.

WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE, unabridged. Cleveland and New York, The World Publishing Co., 1951, p. 1540.

ABRIDGED DICTIONARIES

Sectarianism, noun. Sectarian character or tendency; excessive devotion to or zeal for a particular sect.

FUNK & WAGNALLS NEW COLLEGE STANDARD DICTIONARY, *Em'.* pha. *type* edition. New York, Funk & Wagnalls [c. 1953]. p. 1058.

Sectarianism, n. 1. The spirit, tendency, or principles of a party, especially of a religious denomination.

2. Devotion to some particular religious denomination, especially, excessive denominational zeal; bigotry.

THE WINSTON SIMPLIFIED DICTIONARY: COLLEGE EDITION. Chicago, Philadelphia [etc.], The John C. Winston Company, 1936. p. 888.

Sectarianism, n. Devotion to the interest of a group; partisan zeal.

WORDS: THE NEW DICTIONARY. New York, Grosset & Dunlap [c. 1947]. p. 512.

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Supreme Court of the United States

OCTOBER TERM, 1953

No. 745

THE GIDEONS INTERNATIONAL,
a Corporation of Illinois, and
BOARD OF EDUCATION OF THE BOROUGH OF RUTHERFORD (NEW JERSEY),

Petitioners,

v.

BERNARD TUDOR,

Respondent.

RESPONDENT'S MEMORANDUM ON PETITION FOR WRIT OF CERTIORARI

This memorandum is submitted in respect to the Petition for a Writ of Certiorari that seeks to review a determination by the Supreme Court of New Jersey. That Court invalidated, as violative of Federal and State constitutional guaranties of separation of church and state and religious liberty, a resolution of the Board of Education of the Borough of Rutherford, New Jersey permitting the Gideons, International to distribute their Bible in the public schools. In their Petition (p. 45), the Gideons state that they have undertaken a program of distributing more than thirty million copies of their Bible among public school children throughout the nation. The implications of this controversy are therefore not limited to the State of New Jersey but are nationwide, and involve important questions under the

establishment and free exercise provisions of the First Amendment of the Federal Constitution. We believe these questions should be considered and authoritatively answered by this Court. Accordingly, we do not oppose the granting of the requested writ of certiorari. Nevertheless, we feel it our duty to call the following facts to this Court's attention.

Review is sought on three grounds only the third of which raises these questions: *First,* that a refusal to allow the distribution of the Gideon Bible in the public schools infringes upon the Petitioners' freedom of the press. *Second,* that inasmuch as public school reading of the Bible has been held by the Supreme Court of New Jersey to be constitutionally permissible,[1] refusal to allow "the distribution of printed portions of the same Bible * * * is discrimination in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution" (Petition, p. 41). *Third,* that the Supreme Court of New Jersey erred in construing the establishment and free exercise provisions of the First Amendment of the Federal Constitution as barring public school distribution of the Gideon Bible.

In respect to the first two grounds, we note preliminarily that this Court has consistently held that a municipal corporation, such as Petitioner Board of Education, does not possess any "rights" under the United States Constitution—such as freedom of the press and equal protection—that can be vindicated here against an adverse decision of the highest court of the State that created it. *City of Trenton* v. *New Jersey,* 262 U. S. 182; *Williams* v. *Baltimore,* 289 U. S. 36. In any event, as to both Petitioners and as to both of the first two grounds, we point out that the claimed violation of the Petitioners' Federal rights occurred when the temporary restraint was first ordered at

1. *Doremus* v. *Board of Education,* 5 N. J. 435, appeal dismissed on jurisdictional grounds, 342 U. S. 429.

the commencement of the litigation (Record, pp. 5-6) and that the Federal ground was not asserted at any stage of the proceedings in the New Jersey courts, although Petitioners had ample opportunity to do so in their Answer (R. 8-10; 13-16), by motion to vacate the restraining order, by assertion on the trial, and by assertion in their briefs and argument before the Supreme Court of New Jersey. We also point out that although Respondent has asserted a Federal question under the establishment and free exercise clauses of the First Amendment at every stage of the proceeding in the New Jersey courts (R. 8, 17, 91, 92), this Court has long held that the assertion of one Federal question in the State courts does not empower it to pass upon other Federal questions asserted for the first time in the petition for certiorari. *Dewey* v. *Des Moines*, 173 U. S. 193; *New York ex rel. Rosevale Realty* v. *Kleinert*, 268 U. S. 646.

We believe, also in respect to both grounds, that substantively neither presents an arguable Federal issue sufficient to warrant review by this Court. None of the decisions of this Court restricting a State's power to interfere with the distribution of religious literature on public highways or in public parks[2] can reasonably be construed as establishing a constitutional right to distribute religious literature within public school buildings to public school pupils. (*Hall* v. *Virginia*, 188 Va. 72, appeal dismissed, 335 U. S. 875; *Watchtower Bible and Tract Society* v. *Metropolitan Life Insurance Company*, 297 N. Y. 572, certiorari denied, 335 U. S. 875; *Washington ex rel. Clithero* v. *Showalter*, 159 Wash. 519, appeal dismissed for want of a substantial Federal question, 284 U. S. 875; *Lyon* v. *Compton Union High School*, 341 U. S. 913; *McNight* v. *Board of Public Education*, 341 U. S. 913; *Greisiger* v. *Ohio*, 340 U. S. 820.) Nor

2. *Schneider* v. *Irvington*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Marsh* v. *Alabama*, 326 U. S. 501; *Tucker* v. *Texas*, 326 U. S. 517.

can any substantial claim of discrimination and unequal protection of the laws be predicated upon a decision of public school authorities to allow the teachers to read orally from a particular book and yet not permit the distribution of that book to the pupils within the public school building. *Lyon* v. *Compton Union High School,* 341 U. S. 913; *McNight* v. *Board of Public Education,* 341 U. S. 913; *Greisiger* v. *Ohio,* 340 U. S. 820.

In respect to the third ground—that the New Jersey Supreme Court misinterpreted the establishment and free exercise clauses of the First Amendment—while we believe this issue was correctly decided by the New Jersey Supreme Court, we agree that an authoritative determination should be made by this Court in view of national importance of the issue. Nevertheless we feel it our duty to point out that the New Jersey Supreme Court explicitly based its decision not only on the First Amendment of the Federal Constitution but also on the non-federal ground that the resolution of the Board of Education violated Article I, paragraph 4 of the New Jersey Constitution (R. 118, 122).

Respectfully submitted,

LEO PFEFFER,
WILL MASLOW,
SHAD POLIER,
ARCHIBALD KREIGER,
Counsel for Respondent.

June, 1954